

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MONTANA  
GREAT FALLS DIVISION**

TOBY KITTRELL,

Plaintiff,

vs.

LT. WILSON, DHO LENAHAAN, CASE  
MANAGER LIGGIT, and CO WARD,

Defendants.

**CV-19-89-GF-BMM-JTJ**

**ORDER**

Plaintiff Toby Kittrell (“Kittrell”), a prisoner proceeding without counsel, filed a Motion to Proceed in Forma Pauperis (Doc. 1) and a Complaint under 42 U.S.C. § 1983. (Doc. 2). United States Magistrate Judge John Johnston granted Kittrell’s Motion to Proceed in Forma Pauperis. (Doc. 5). The Court then gave Kittrell the opportunity to amend his Complaint, so that he may pass the screening standard required in prisoner proceedings where the plaintiff proceeds in forma pauperis. (Doc. 7); 28 U.S.C. §§ 1915A(b), 1915(e)(2)(B). The Court informed Kittrell that the factual allegations in his original Complaint were insufficient to state a claim under Fed. R. Civ. P. 8(a)(2). (Doc. 7); *see Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009).

Kittrell filed an Amended Complaint on June 10, 2020. (Doc. 8). The Amended Complaint reasserted the allegations set forth in the original Complaint (Doc. 2), but provided even less factual information. (Doc. 8).

United States Magistrate Judge John Johnston reviewed the Amended Complaint (Doc. 8) under 28 U.S.C. §§ 1915A(b), 1915(e)(2)(B). Judge Johnston entered Findings and Recommendations in this matter on October 14, 2020. (Doc. 9). Judge Johnston recommended that this Court dismiss Kittrell's Amended Complaint (Doc. 8), because it fails to state a federal claim upon which relief may be granted. (Doc. 9).

No party has filed objections to the Findings and Recommendations. The Court has reviewed Judge Johnston's Findings and Recommendations for clear error. *McDonnell Douglas Corp. v. Commodore Bus. Mach., Inc.*, 656 F.2d 1309, 1313 (9th Cir. 1981). The Court finds no error in Judge Johnston's Findings and Recommendations and adopts them in full.

### **ORDER**

Accordingly, **IT IS ORDERED:**

1. This matter is **DISMISSED** for failure to state a federal claim.
2. The Clerk of Court is directed to close this matter and enter judgment pursuant to Rule 58 of the Federal Rules of Civil Procedure.

3. The Clerk of Court is directed to have the docket reflect that the Court certifies pursuant to Rule 24(a)(3)(A) of the Federal Rules of Appellate Procedure that any appeal of this decision would not be taken in good faith.

4. The Clerk of Court is directed to have the docket reflect that this dismissal counts as a strike pursuant to 28 U.S.C. § 1915(g) because Kittrell failed to state a claim upon which relief may be granted.

Dated this 2nd day of November, 2020.

A handwritten signature in blue ink, reading "Brian Morris". The signature is written in a cursive, flowing style.

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Brian Morris, Chief District Judge  
United States District Court